

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT LAINGEN DUESLER, II,

No. C 09-4219 SBA (PR)

Petitioner,

v.

BEN CURRY, Warden,

Respondent.

**ORDER DENYING PETITION FOR A  
WRIT OF HABEAS CORPUS; DENYING  
CERTIFICATE OF APPEALABILITY;  
AND TERMINATING ALL PENDING  
MOTIONS**

Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 claiming that his constitutional rights were violated in connection with a decision by the California Board of Parole Hearings (Board) in 2008 denying him parole.

In an Order dated April 23, 2010, the Court ordered Respondent to show cause why the petition should not be granted.

On June 24, 2010, Respondent filed a motion to dismiss the petition for failure to exhaust state court remedies. Thereafter, Petitioner filed an opposition to the motion, entitled, "Motion to Strike Motion to Dismiss."<sup>1</sup>

In his petition, Petitioner specifically claims that the Board's 2008 denial does not comport with due process because it is not supported by some evidence demonstrating that he poses a current unreasonable threat to the public.

A prisoner subject to California's parole statute receives adequate process when he is allowed an opportunity to be heard and is provided with a statement of the reasons why parole was denied. Swarthout v. Cooke, 131 S. Ct. 859, 862 (2011). The attachments to the petition show Petitioner received at least this amount of process. The Constitution does not require more. Id.

Whether the Board's decision was supported by some evidence of current dangerousness is irrelevant in federal habeas. The Supreme Court has made clear that "it is no federal

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<sup>1</sup> The Clerk of the Court has docketed Petitioner's "Motion to Strike Motion to Dismiss," as a pending motion (docket no. 15). However, the Court construes it as his opposition to the motion to dismiss. Therefore, that motion is TERMINATED from this Court's docket.

1 concern . . . whether California's 'some evidence' rule of judicial review (a procedure beyond what  
2 the Constitution demands) was correctly applied." Id. at 863. Even though Respondent argues that  
3 Petitioner's due process claim is unexhausted, it clearly is without merit; therefore, the Court  
4 DENIES his due process claim notwithstanding the possibility that it may be unexhausted.

5 For the foregoing reasons, the petition for a writ of habeas corpus is DENIED. And pursuant  
6 to Rule 11 of the Rules Governing Section 2254 Cases, a certificate of appealability (COA) under 28  
7 U.S.C. § 2253(c) is DENIED because it cannot be said that "reasonable jurists would find the district  
8 court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S.  
9 473, 484 (2000). Petitioner may seek a certificate of appealability from the Ninth Circuit Court of  
10 Appeals.


11 Respondent's motion to dismiss and Petitioner's "Motion of Continued Intent to Prosecute"  
12 are DENIED as moot.

13 The Clerk of the Court shall enter judgment in favor of Respondent, terminate all pending  
14 motions -- including Respondent's motion to dismiss (docket no. 14), Petitioner's "Motion to Strike  
15 Motion to Dismiss" (docket no. 15), and his "Motion of Continued Intent to Prosecute" (docket no.  
16 21) -- and close the file.

17 This Order terminates Docket nos. 14, 15 and 21.

18 IT IS SO ORDERED.

19 DATED: 2/28/11

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4  
5

6 ROBERT LAINGEN DUESLER II,  
7 Plaintiff,

Case Number: CV09-04219 SBA

**CERTIFICATE OF SERVICE**

8 v.

9 BEN CURRY et al,

10 Defendant.  
11 \_\_\_\_\_/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
13 Court, Northern District of California.

14 That on February 28, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
17 located in the Clerk's office.

18 Robert Laingen Duesler D-43799  
19 P.O. Box 8101  
20 A-1229  
21 San Luis Obispo, CA 93409-8101

22 Dated: February 28, 2011

23 Richard W. Wieking, Clerk  
24 By: LISA R CLARK, Deputy Clerk  
25  
26  
27  
28